

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GREGORY BROOKS,

Plaintiff,

Civ. No.: 17-3626

-against-

THE DOE FUND, INC.,
TERRY COOPER individually and in his official capacity,
JAMES WASHINGTON individually and in his official
capacity,
And
ANTHONY WIGGINS individually and in his official
capacity,

Defendants.

**DECLARATION OF KELLY L. O'CONNELL IN OPPOSITION OF
DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**

KELLY L. O'CONNELL declares under penalty of perjury that the following is true and correct:

1. I am an attorney of the Derek Smith Law Group, PLLC, attorneys for Plaintiff, Gregory Brooks in the above-referenced action.
2. I submit this declaration in support of Plaintiff's oppositions to Defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This declaration is based on personal knowledge, as well as the books and records maintained by Defendants The Doe Fund ("TDF"), as well as the individuals James Washington (collectively "Washington") and Terry Cooper ("Cooper"), Gregory Brooks ("Brooks"), and Jerome House ("House").
3. This affirmation is based upon personal knowledge and the record in this case, including the books and records maintained by the TDF, deposition testimony of the Plaintiff, Mr. House, and the individually named Defendants, along with documents produced by Plaintiff in this matter throughout the course of litigation.

4. I am the attorney for Mr. House, who is an African-American man. Mr. House was a witness in this matter.

5. All of the following are submitted in opposition to the Defendant's Motion for Summary Judgment:

- **Plaintiff's Ex. 1:** Plaintiff Brooks' 2019 Declaration (Brooks Decl.).
- **Plaintiff's Ex. 2:** A true and correct copy of Brooks' Complaint filed on June 15, 2017, *See* ECF Docket No. 1. (Ex. 2 Complaint).
- **Plaintiff's Ex. 3:** Excerpts from Plaintiff Brooks' deposition, initially held on June 7 and June 15, 2018. (Brooks Tr.).
- **Plaintiff's Ex. 4:** Excerpts from the witness Jerome House's deposition on (House Tr.).
- **Plaintiff's Ex. 5:** A copy of excerpts of the transcript of the deposition of Terry Cooper, conducted on July 6, 2018. (Cooper Tr.).
- **Plaintiff's Ex. 6:** A copy of excerpts of the transcript of the deposition of James Washington, conducted on June 25, 2018. (Washington Tr.).
- **Plaintiff's Ex. 7:** True and correct copies of Plaintiff's Earning Statements and from TDF, Bates Stamped BROOKS 19-29. (Ex. 7 Earning Statements)
- **Plaintiff's Ex. 8:** July 25, 2016 Investigation Documentation of Terry Cooper marked at the deposition of James Washington as Exhibit 15, bates stamped as TDF 163-174. (Ex. 8 2016 Investigation)
- **Plaintiff's Ex. 9:** A copy of Plaintiff's Psychological Evaluation by Stephen Reich, Ph. D., bates stamped as BROOKS 36-49 (Ex. 9 Psych. Eval.).
- **Plaintiff's Ex. 10:** A copy of Plaintiff's Medical Documents, bates stamped as 146-221 (Ex. 10 Medical File).

- **Plaintiff's Ex. 11:** A copy of TDF's 2016 Emails discussing Plaintiff, bates stamped TDF 161, 162, 175 - 179 (Ex. 11 2016 Emails).
- **Plaintiff's Ex. 12:** "Ready, Willing & Able Terms of Participation", bates stamped TDF 1-4. (Ex. 12 Terms)
- **Plaintiff's Ex. 13:** A true and correct copy of the New York City Department of Homeless Services ("NYC DHS") Code of Conduct, introduced as Exhibit "21" at Plaintiff's deposition, bates stamped as TDF 5-8. (Ex. 13 DHS)
- **Plaintiff's Ex. 14:** A true and correct copy of the Gates Avenue Facility's Late/Overnight pass policy, introduced as Exhibit "22" at Plaintiff's deposition, bates stamped as TDF000158. (Ex. 14 Pass Policy)
- **Plaintiff's Ex. 15:** A true and correct copies of the case notes from meetings between Plaintiff and his assigned case managers from June 26, 2016 to July 14, 2017, introduced as Exhibit "23" at Plaintiff's deposition, bates stamped as TDF 8-23. (Ex. 15 Case Notes)
- **Plaintiff's Ex. 16:** A true and correct copy of Plaintiff's schedule, which reflects his actual assignments when he was a participant in RWA, introduced as Exhibit "5" at Plaintiff's deposition, bates stamped as TDF 26. (Ex. 16 Late Night MW)
- **Plaintiff's Ex. 17:** True and correct copies of Plaintiff's Pay Statements from TDF, bates stamped as TDF 28-36. (Ex. 17 Pay Statements)
- **Plaintiff's Ex. 18:** A true and correct copy of Plaintiff's Workforce Development Field Schedule for the week of July 17, 2016 to July 23, 2016, introduced as Exhibit "4" at Plaintiff's deposition, bates stamped as TDF 142. (Ex. 18 Field Schedule)

- **Plaintiff's Ex. 19:** A true and correct copy of Plaintiff's July 21, 2016 complaint regarding Terry Cooper, introduced as Exhibit "8" at Plaintiff's deposition, bates stamped as TDF 159-160. (Ex. 19 July 21, 2016 Complaint)
- **Plaintiff's Ex. 20:** A true and correct copy of e-mails exchanged between Washington, Eunice Gilmore, Kenise Etwaru, Craig Trotta and Elizabeth Hanson, introduced as Exhibit "13" at Plaintiff's deposition, bates stamped as TDF 161-162. (Ex. 20 TDF Emails)
- **Plaintiff's Ex. 21:** A true and correct copy of the Gates Avenue Facility Out of Field Report for the week of July 25, 2016, which was produced to Plaintiff during the course of discovery and bates stamped as TDF 65-68. (Ex. 21 July 25, 2016 Report)
- **Plaintiff's Ex. 22:** A true and correct images provided by Plaintiff of the Gates Avenue Facility including Defendant Cooper's office, Plaintiff's bedroom, and bathroom, bates stamped as BROOKS 75-87. (Ex. 22 Photos)
- **Plaintiff's Ex. 23:** A true and correct copy of Cooper's termination letter, dated August 4, 2016, bates stamped as TDF 180. (Ex. 23 Cooper's Termination Letter)
- **Plaintiff's Ex. 24:** A true and correct copy of Cooper's' Response to Plaintiffs' 1st Interrogatories. (Ex. 24 Cooper Int. Responses)
- **Plaintiff's Ex. 25:** A true and correct copy of Cooper's' Response to P's 1st Document Requests. (Ex. 25 Cooper Doc Responses)
- **Plaintiff's Ex. 26:** A true and correct copy of Defendant TDF and Washington's Response to Plaintiffs' 1st Interrogatories. (Ex. 26 TDF Int. Responses)
- **Plaintiff's Ex. 27:** NA A true and correct copy of Defendant TDF and Washington's Document Requests. (Ex. 27 TDF Doc Responses)

- **Plaintiff's Ex. 28:** A true and correct copy of the June 2013 complaint filed by Jerome House, a participant in RWA at the Porter Avenue Facility, regarding Terry Cooper, bates stamped as TDF 181-182. (Ex. 28 June 2013 Complaint)
- **Plaintiff's Ex. 29:** True and correct copies of e-mails and memorandum regarding TDF'S investigation into Jerome House's June 2013 complaint, bates stamped as TDF 186-193. (Ex. 29 2013 Emails)
- **Plaintiff's Ex. 30:** A true and correct copy of the written warning provided to Cooper on July 2, 2013, bates stamped as TDF 194. (Ex. 30 2013 Warning)
- **Plaintiff's Ex. 31:** A true and correct copy of Plaintiff's late/overnight pass request history at the Gates Avenue Facility, bates stamped as TDF 86. (Ex. 31 Pass Requests)
- **Plaintiff's Ex. 32:** A true and correct copy of Plaintiff's multi-use late pass for the Hudson River Crew assignment for the week of July 23, 2016 to July 28, 2016, bates stamped as TDF 139. (Ex. 32 Multi Pass)
- **Plaintiff's Ex. 33:** A true and correct copy of a Notification of Bed Change assignment provided to Plaintiff on May 1, 2017 by TDF, introduced as Exhibit "20" at Plaintiff's deposition, bates stamped as BROOKS 251. (Ex. 33, Bed Change)
- **Plaintiff's Ex. 34:** True and correct copies of TDF's incident reporting policy and participant incident report form, bates stamped as TDF 154-156. (Ex. 34 Reporting Policy)
- **Plaintiff's Ex. 35:** A true and correct copy of TDF's Sexual Harassment Policy, bates stamped as TDF 196-197. (Ex. 35 Sexual Harassment Policy)
- **Plaintiff's Ex. 36:** Brooks' EEOC Charge No. 520-2016-0358, bates stamped as EEOC 1 - 13 (Ex. 36 EEOC Charge).

- **Plaintiff's Ex. 37:** A copy the Notice of Right to Sue issued and mailed by the EEOC on March 24, 2017 in connection with plaintiff's EEOC Charge No. 520-2016-0358, bates stamped BROOKS 74. (Ex. 37 RTS).
- **Plaintiff's Ex. 38:** As provided in Defendant TDF exhibits from Bauer Decl. Ex. Exhibit "F," a true and correct copy of excerpts from TDF's website (<http://www.doe.org/>), including an article describing RWA which was accessible as a PDF link from TDF's website as of January 9, 2019, and last edited in October 2016. (<https://www.doe.org/wp-content/uploads/2016/10/ReadyWillingandAble.pdf>) (Ex. 38 TDF Websites)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 29, 2018
New York, New York

DEREK SMITH LAW GROUP, PLLC
Attorneys for Plaintiff



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CERTIFICATE OF SERVICE

Kelly O'Connell, an attorney duly admitted to practice before this Court, certifies that on March 29, 2019, he caused to be served by email and USPS the following documents: Plaintiff's Local Rule 56.1 Statement of Undisputed Material Facts, Plaintiff's Responses to Defendant's Local Rule 56.1 Statement of Undisputed Material Facts, the Declaration of Kelly O'Connell in Support of Plaintiff Brooks' Opposition Motion for Summary Judgment, and the exhibits attached thereto upon the following parties:

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